

Raymont (Migration) [2020] AATA 5584 (6 November 2020)

DECISION RECORD

DIVISION: Migration & Refugee Division

REVIEW APPLICANT: Mr Peter Kenneth Francis Raymont

VISA APPLICANTS: Mrs Ngoc Huong Chau
Master Quoc Vu To
Master Ut Giau To

CASE NUMBER: 1725272

DIBP REFERENCE(S): BCC2016/3222122

MEMBER: Christine Cody

DATE: 6 November 2020

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the application for Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the first named visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:

- cl.309.211 of Schedule 2 to the Regulations
- cl.309.221 of Schedule 2 to the Regulations

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Statement made on 6 November 2020 at 1:32pm

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – applicants’ visits to each other’s countries – applicant’s inaccurate knowledge of the sponsor – methods of communication – mutual connection and emotional reliance – social recognition of the relationship – money transfers – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5, 65

Migration Regulations 1994, Schedule 2, cls 309.211, 309.221, 309.321; r 1.15

CASES

He v MIBP [2017] FCAFC 206

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

Background

1. The visa applicant, Ngoc Huong Chau, is a 50 year old woman from Vietnam. She and her two children from a previous marriage, Quoc Vu To and Ut Giau To, applied for Partner (Provisional) (Class UF) visas under s.65 of the *Migration Act 1958* (the Act) on 28 September 2016 on the basis of the visa applicant's relationship with Mr Peter Raymont, the sponsor (the review applicant), an Australian citizen.
2. A delegate of the Minister for Immigration refused to grant the applications on 31 August 2017 as the delegate was essentially not satisfied that there was sufficient evidence of a genuine spousal relationship. The delegate thus found that the visa applicant did not satisfy cl.309.211 because the delegate was not satisfied she was the spouse of the sponsor. As the visa applicant did not satisfy the primary criteria, the children were unable to meet secondary criteria of 309.321 because they could not be considered the dependents or members of the family unit of a person who has satisfied the primary criteria.
3. The review applicant lodged an application for review of the delegate's decision with the Tribunal on 17 October 2017.
4. The review applicant appeared before the Tribunal on 30 October 2020 to give evidence and present arguments. The Tribunal also received oral evidence by telephone from the visa applicant (using an interpreter in the Vietnamese and English languages, and with some communication difficulties) and from Mrs Nguyen Thi Hong Dao (known as Sarah), the visa applicant's former husband's sister who resides in Australia.
5. The review applicant was represented in relation to the review by his registered migration agent. The Tribunal had before it the Departmental file and the Tribunal file. There are no non-disclosure certificates on the Department file.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

The relevant law

7. At the time when the visa application was made, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
8. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship.
9. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and

continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

CONSIDERATION OF CLAIMS AND EVIDENCE - WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

Are the parties validly married?

10. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The visa applicant ('the applicant') provided evidence that she and the sponsor were married on 6 August 2015 in Australia, including a marriage certificate. There is nothing to suggest that the marriage is not valid, and the delegate did not raise any issues as to the validity of the marriage. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

The Department

11. The documents provided to the Department set out history of the parties and their relationship which can be summarised as follows:
 - The applicant was born in 1972 in Rach Gia City, Kien Giang province, Vietnam. She was previously married to To Van Lam. They had two children (the secondary applicants): Quoc Vu To was born 1 September 1999 and Ut Giau To was born 12 February 2008. The applicant's husband died in 2012. After her husband died, the husband's family considered finding another family home for the applicant.
 - The review applicant was born in 1950 in Sydney and is an Australian citizen by birth. He currently lives in Queensland. He was previously married in 1970; and divorced in 1973. He has never been in a de facto relationship.
 - The review applicant travelled to New Zealand between 1977 and 1981, Europe between 1989 and 1994, and the USA between 2006 to 2008. He has also travelled to and from Vietnam, commencing since he met the applicant.
 - The review applicant was a frequent customer of Sarah's nail salon and knew Sarah well. Sarah introduced the parties, and the review applicant travelled to Vietnam where he met the applicant on 10 July 2015. They used other people to help communicate and hand gestures, as the applicant did not speak English. The review applicant travelled to the applicant's home area and stayed there for 10 days. He enjoyed the time and liked her sons. After several weeks he then returned to Australia. They communicated with each other through the help of others due to their language differences. They both learnt that they had feelings for each other. The review applicant returned to Vietnam on 12 September 2015 and stayed for two weeks. It was during this period that they committed to a shared life together. On their trips to see each other, they have been sightseeing; for example, in Vietnam they travelled and went on a family holiday for two weeks with the dependent applicants. The applicant visited the review applicant in Australia on 27 December 2015 until 27 January 2016, travelling around Australia and staying at the review applicant's house. The applicant came to Australia again from 18 June 2016 until

8 August 2016. As noted above, the parties married on 6 August 2016; this occurred in Australia.

- The review applicant has been single for most of his life and believed he would remain single. However, when he met the applicant in Vietnam, they felt a connection despite the language barrier. The review applicant has begun to learn Vietnamese.
- The review applicant gets along well with the dependent applicants and the applicant and is grateful to be part of the dependent applicants' lives. The review applicant considers that the applicant is a good homemaker, she keeps the house clean, and the review applicant does little housework. The review applicant does gardening, helps with groceries and occasionally cooking. The applicant is very fussy and cleans up after the review applicant, which is nice for him. When the applicant came to Australia they stayed at his home, they ate together and watched movies together. They discussed plans for the future, and the review applicant showed the applicant neighbouring schools, so she can decide where she wants the boys to attend school. The applicant is kind and caring.
- The applicants have been unable to open accounts or make investments together since the applicant was only in Australia for a limited time, but the review applicant is generally responsible for daily expenses

The Tribunal's consideration

12. The Tribunal has considered all the circumstances of this relationship. The Tribunal has been provided with application forms, submissions from the agent, statements from the sponsor and others, a transcript of a Departmental interview with the applicant, Departmental notes and documentary evidence relating to different aspects of the relationship. These are described in Annexure B. The Tribunal is mindful of concerns which have arisen from the interview with the applicant, including a lack of a common language, and other matters.
13. The Tribunal held concerns in relation to the applicant's evidence offered at the delegate's interview. On one view, her evidence could indicate that the applicant had very limited knowledge of the sponsor, and that the marriage was an arrangement to enable her to come to Australia with her two children, as opposed to a genuine relationship. The concerns included that when asked why her husband had not come to visit her in the last 12 months, she said it is because he is sick with his heart and he feels tired. When asked whether he had travelled anywhere out of Australia in the last 12 months, she said no, he stayed home. However, the evidence before the Department and the Tribunal was that the sponsor had travelled to Canada in April 2017, which indicated that the applicant was unaware that he could travel and that his health was not a barrier to visiting her.
14. Another concern was that the applicant did not seem to know how many times the review applicant had visited her in Vietnam; she initially said once; when asked if she was sure, she said twice [as at the date of the interview, however, he had travelled three times to Vietnam]. There were other concerns (including those raised by the delegate) which appeared to show a similar lack of knowledge. The delegate did not accept that the applicant would not be able to recall the circumstances of the inception of the development of her relationship and expected that a person in a genuine partner relationship would recall matters that the applicant could not recall. The delegate considered that this cast significant doubt over the truthfulness of her claims and the genuineness of the parties' relationship.
15. Explanations have been offered to the Tribunal for the applicant's evidence at interview, namely that she is illiterate and has lived a sheltered life on an island which, pre-development, was not exposed to many aspects of the modern world. The Tribunal is

mindful that this could be an explanation fabricated to explain significant inconsistencies and omissions in the applicant's evidence at the delegate's interview; alternatively, it could be a genuine assertion. The Tribunal considers that there is evidence in the delegate's interview, and evidence taken by the Tribunal from the applicant herself, which support the assertion that the applicant's seemingly poor evidence is a result of her circumstances as opposed to being indicative of a non-genuine relationship:

- At the interview, the applicant was asked if she went to school and she said no. She was asked her husband's age and she said 50 years. At that time, he was actually aged 67 years. If the delegate had not continued asking questions, this on its own would have seemed a significant lack of knowledge on the part of the applicant. However, the delegate asked next "Do you know his date of birth?", and the applicant said that he was born in 1950 [which is correct]. The delegate then asked if the applicant knew how to calculate, and she said no.
- In addition, when asked by the delegate when she was introduced to the sponsor, she said 6 August 2012 [which, on all the evidence provided, was clearly incorrect], however when the delegate asked her a follow-up question, namely how many years ago was she introduced to the review applicant, she said two years ago [which means that they were introduced in 2015, which is consistent with the other evidence].

16. Sarah also told the Tribunal that her sister-in-law is unable to calculate.
17. There is a further reason why the Tribunal is prepared to accept that the applicant's evidence does not mean that the relationship is not genuine: much of the review applicant's evidence and explanations for concerns was spontaneous, plausible, and credible. He explained that the applicant has been illiterate all of her life. When she was a young girl, she was not allowed to go to school, and even now girls can only attend school up until the age of about 10 years. She has been treated badly all of her life including by her husband. She has "the concentration of a gnat"; she has lots inside her, but she doesn't know how to get it out. He also discussed their language barrier; explaining that his Vietnamese studies in Australia have not been going too well ("I have been slack"); but when he is in Vietnam it all comes back to him and he is able to engage in (limited) communication with people in Vietnam, better than when he is in Australia. The language barriers have caused difficulties, but he considers they are not insurmountable. When they are together, they feel peaceful. They can sit together for hours, and they don't really need to talk.
18. Concerning Canada, the pre-hearing material indicated that he went because his friend got married here. He told the Tribunal that he was not sure she would be able to get a visa to go, nor that she would really understand, so he didn't try to explain it to her. In the context of the evidence and the relationship the Tribunal accepts this explanation and does not consider that this indicates a lack of commitment between the parties.
19. Concerning her lack of knowledge as to the number of times that her husband had visited her in Vietnam, the Tribunal accepts that the applicant's own evidence indicates that she is unable to explain these concepts, and given that there is independent documentary evidence which supports that after their initial meeting the sponsor returned a further two times to see her in Vietnam, the Tribunal is prepared to accept that he did travel to Vietnam to see the applicant (and not for some other purpose), but that the applicant was unable to count the number of times.
20. A further concern held by the Tribunal was the inconsistency in the evidence as to the review applicant's health. The applicant also told the Tribunal that the sponsor had heart problems and stomach cancer and because he was ill, she has to come to Australia to look after him. The Tribunal put to the review applicant that her evidence was different to his (that he is

pretty healthy for a 70 year old, he just has diabetes and prostate issues). His explanation was that because of their communication issues, and she asks him about being ill, he tries to explain that he takes blood thinners to keep his blood thin, and so when he places his hand on his heart, she interprets that as having heart problems. She thinks his prostate issues are stomach issues, because some communication is done through pointing. He said he has not really been able to explain these things to her; and the Tribunal accepts that this is not a big issue for them.

21. The Tribunal has weighed its concerns against the explanations, and other evidence given by the review applicant which it considers was persuasive and supportive of the relationship. The review applicant told the Tribunal that he felt a connection when they first met which surprised him, but it exists. He couldn't really remember when they decided to get married; he said that it was more of a consensus between them, and when he had come back to Vietnam for the second time, he was interested in her but he wanted to see if the feeling was mutual. During those couple of weeks, there was an unspoken agreement.
22. He said that after they had committed to being together, he organised for her to obtain a visitor visa to come to Australia to see what she thought of it. This is supported by the Departmental movement records which show that, after the September 2015 trip, the applicant travelled to Australia on 28 December 2015 and stayed for a month, leaving on 26 January 2016. If the only aim of the applicant was to obtain a visa to remain in Australia, then the parties could have married on this trip, and she could have stayed and applied for a partner visa at that time. This did not occur, and instead, consistent with the review applicant's evidence that she needed to see if Australia was an appropriate place for her to live with her two children, the applicant returned to Vietnam. Then a few months later the review applicant came back to Vietnam to visit her in May 2016. He returned to Australia, and then the applicant travelled to Australia on 19 June 2016, and it was during this visit that the parties married, on 6 August 2016. She returned to her children on 8 August 2016.
23. The review applicant said that they share the same sort of peaceful attitude, they are not really interested in the outside world; they are not the type of people who have to talk all day; they will just sit there together and say 5 words unless there is something that needs to be said. There is a closeness they feel in each other's company that doesn't require them to talk. They didn't have the words anyhow because of their language difficulties. He said that neither of them is overly emotional and he doesn't think that anyone else but the applicant would tolerate him.
24. The review applicant said that this "has been going for 5 years" and he hasn't been doing it for fun. They have missed out on seeing each other recently due to COVID-19 and the Department had refused her another visitor visa since the spouse visa application had been refused. They like each other, they trust each other, they bond and it is a type of love he never thought he would find and he wants to spend the rest of his life with her. The added bonus is the young boy can get to go to school in Australia and he will do very well. He feels comfortable, secure and relaxed when he is beside her, when they walk down the street, she always has her arm in his; it just works. He is proud of the opportunities he has been able to offer his wife since they had met; she had got to experience things that she had never before experienced, such as travelling by plane.
25. The Tribunal has also considered the consistencies in the evidence given by the applicant at interview, and at hearing, with the evidence of the review applicant. For example, the applicant was aware that the review applicant visited her sister-in-law's nail salon; that he drives a taxi on the weekends; and that they didn't like to go out [the review applicant said that they are not social, they like to stay home and be with each other]. Other consistent evidence related to the cause of death of the applicant's first husband. The documentation before the Department and Tribunal only indicated that the applicant's former husband died

from “disease” in 2012; it did not reveal the disease. The review applicant was able to explain to the Tribunal that his wife’s first husband was an alcoholic who had been violent towards her and the older son, and he had died from alcohol-related disease. This was confirmed when the Tribunal called the witness Sarah.

26. Further, both the review applicant and the applicant told the Tribunal that they both don’t drink alcohol; the review applicant explained that the reason she does not drink alcohol is because of her former husband who was an alcoholic. The applicant also told the Tribunal that her husband smokes [and prior to this evidence, during one of the breaks during the Tribunal hearing, the review applicant indicated that he wanted to go outside to have a cigarette.] The review applicant also told the Tribunal that when she came to Australia, she accompanied him when he went to umpire a cricket match. He was an accredited cricket umpire and she would come and sit on the sideline for 6-7 hours and watch him umpiring even though, he said, she had no concept of what was going on. He said he was astonished that when he placed a seat next to the stands, she was “communicating” without language, with the wives and girlfriends of the cricketers, she was chattering away even though they couldn’t understand each other. The applicant gave similar evidence about this event. Both parties told the Tribunal that they use technology on their phone to communicate if they have to; in the circumstances of this case, the Tribunal does not consider that their methods of communication undermine the claims that they are committed to each other.
27. Sarah also gave evidence to the Tribunal as to the relationship. She is very supportive of the relationship, and her consistent evidence as to the character of the applicant, and the way that the parties communicate, given without having heard the Tribunal’s questions of the sponsor or the applicant, was also persuasive.
28. The Tribunal has considered the nature of the commitment of the parties to each other. The Tribunal accepts that each marriage is different. The Tribunal accepts that in this case, the applicant and sponsor have a connection and emotional reliance upon each other, and that they draw support from each other. The Tribunal accepts their commitment to each other is long-term, and that each is valued by the other. The Tribunal considers that this supports that the applicant is the spouse of the sponsor. The Tribunal accepts that the relationship has been ongoing for 5 years, and that they have lived together each time they have been in the same country during those 5 years.
29. The Tribunal has considered the social aspects of the relationship. In addition to the evidence of Sarah who clearly knows of the relationship and is supportive of it, the Tribunal was provided with additional statutory declarations from numerous people in the review applicant’s home area. He explained that although he and his wife are not particularly social, everyone knew about her when she came and visited and stayed with him, and they often ask him when the immigration case will be completed so that she can finally join him. The statutory declarations are summarised as follows:
 - Mervyn Bailey dated 19 October 2017: he is a member of Charters Towers’ Regional Council and has known the review applicant for the past 3 years, he met the applicant, and knows that the applicants are a couple;
 - Leesa Currie, dated 20 October 2017, stating that she has known the review applicant for 3 years, and has met the applicants when they were shopping together;
 - Kylee West, dated 13 October 2017, stating that she has been a travel agent for the applicants, and discussed the applicant’s children moving to Australia;
 - Andrew Jensen dated 11 October 2017, stating that he is the real estate agent for the review applicant’s leasehold, and that the applicant has stayed with the review

applicant from 28 December 2015 until 26 January 2016, 19 June 2016 until 8 August 2016, and 13 September 2017 until 20 November 2017;

- Justin van Wikj dated 20 October 2017, stating that the review applicant has been a customer at his store for a number of years, he has met the applicants shopping together, that the review applicant has purchased jewellery, a wedding ring, and an engagement ring from the store, and that the review applicant has been to visit the applicant in Vietnam three times;
- Karl Batzlor dated 20 October 2017, stating that he has known the review applicant for 3 and a half years, and has met the applicants together and that the applicant has talked of bringing her sons to live with the review applicant in Australia;
- Kathryn Baxter dated 20 October 2017, stating that the applicants have come to her store and that the review applicant speaks fondly of his trips to Vietnam;
- Lisa Giddy dated 13 October 2017, stating that she has known the applicants for two years, that the applicants have visited one another and are married, she has witnessed them together and discussed the review applicant's plans to move the applicant and her family to Australia;
- Nghi Truon dated 23 March 2018, stating that she owns the Golden Mine Chinese restaurant and that her mother and she have known the applicants for nearly 3 years, and whenever the applicant is not in Australia, she and her mother have helped the parties talk over the phone;

30. Concerning the applicant's family, the sponsor told the Tribunal that he is also proud that he is not considered as an outsider for her family, but that he is considered as family. The Department and Tribunal were also provided with various photos. The Tribunal accepts the evidence provided and finds that the parties represent themselves to others as being in a married relationship, and they are accepted by others as a married couple, and that although not particularly social they do plan and undertake joint social activities, for example at the cricket, or with Sarah and her husband.
31. The Tribunal has considered the nature of the household. The sponsor is 70 years of age and the applicant is 50 years of age. The Tribunal accepts that the applicant has been attending to domestic and family chores for most of her life and that she does this when with the sponsor. The Tribunal accepts that the sponsor is appreciative of this and that he also contributes to some chores. They go shopping together, so the review applicant can help carry bags. The Tribunal notes the letter from Mark Brady, Principal of Richmond Hill State High School dated 10 October 2017, stating that the parties have come to discuss enrolment of the dependent applicant Ut Giau To at the school should he move to Australia; the Tribunal accepts that it is the intention that the youngest child will attend to school in Australia.
32. The Tribunal accepts that the review applicant had knowledge of the applicant's household in relation to her children. He said that Ut Giau To is 12 years old, he lives with his mother and still attends school. Quoc Vu To is 21 years of age, he is a fisherman, he resides separately to his mother. He keeps his money to himself, and his mother does not contribute any money to him. The sponsor also does not provide him with money. He has been a fisherman since he was very young, about 12 to 13 years, he has worked his way up and he is now second mate on a good boat. When his boat returns to shore, he sees his girlfriend. He barely sees his mother; he was in town for one week and only saw his mother twice, for not more than 10 to 15 minutes. He is a nice kid, but he is independent.

33. While acknowledging that for most of the parties' relationship they have been in separate countries, the Tribunal accepts that when they are together, the nature of their household is supportive evidence that the applicant is the spouse of the sponsor, as is the review applicant's knowledge of the applicant's household situation in Vietnam.
34. The Tribunal has considered the financial aspects of the relationship. When asked to explain the financial intermingling, the review applicant said frankly that there is none; she does not have any money. He sends her over \$100-\$200 per fortnight, which is the equivalent of about 1.5 million or 3 million over there. When he goes there, he pays for everything, and when he departs, he leaves all of his change with her. On one occasion he asked a friend of his to take money over to her. The applicant gave evidence that he provides her with money on a regular basis; although the details were somewhat different (as on a number of occasions in this matter), the Tribunal is prepared to accept that the differences are caused by the applicant's background and it does not place adverse weight on the differences. The Tribunal accepts that because they live in different countries, there is no joint ownership of major assets or any legal obligations owed by one party to another. The Tribunal accepts that the sponsor provides money to the applicant for the benefit of her and her son and that this is evidence in support of a finding that the applicant is the spouse of the sponsor.
35. [Details deleted.]

Conclusion in relation to the first named applicant

36. The Tribunal is satisfied the review applicant and the applicant have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal is satisfied the relationship between them is genuine and continuing. The Tribunal is satisfied they do not live separately and apart on a permanent basis. On the basis of the above the Tribunal is satisfied that the requirements of s.5F(2) are met at the time the visa application was made and the time of this decision. Therefore, the applicant meets cl.309.211 and cl.309.221.
37. The Tribunal has not assessed sponsorship limitations.
38. Noting the legislative requirements, the Tribunal has not made a finding in relation to the secondary applicants' satisfaction or otherwise of the relevant criteria.

Conclusion

39. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 309 visa.

DECISION

40. The Tribunal remits the application for Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the first named visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:
- cl.309.211 of Schedule 2 to the Regulations
 - cl.309.221 of Schedule 2 to the Regulations

Christine Cody
Member

ANNEXURE A - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

ANNEXURE B

The Department file contains documents including the following:

- Application for sponsorship for a partner (form 40SP) dated 16 June 2017;
- Application for migration form, dated 28 September 2016;
- A copy of the review applicant's passport;
 - [document details deleted.]
- [document details deleted];

- a birth certificate for the review applicant;
- a birth certificate and translation for the dependant applicant To Ut Giau;
- a Vietnamese police check and translation for the dependant applicant To Quoc Vu dated 20 June 2016, showing no convictions;
- a Vietnamese police check and translation for the dependant applicant To Quoc Vu dated 88 June 2017, showing no convictions;
- an identity card and translation for the dependant applicant To Quoc Vu;
- a CV and translation for the dependant applicant To Quoc Vu, stating that he is attending high school and has not worked, dated 7 June 2016;
- a death certificate and translation for To Van Lam, the father of the dependant applicant To Quoc Vu, stating that he died on 14 October 2012 from disease;
- a divorce order made by the WA Supreme Court for the review applicant and Shirley Faye Raymont, dissolving the marriage on 20 September 1973;
- a marriage certificate and translation for the visa applicant dated 27 May 2016, stating that the visa applicant was married to To Van Lam who is now deceased;
- a Queensland marriage certificate for the applicants, stating that they married on 6 August 2016;
- a Vietnamese marriage certificate and translation for the visa applicant and her deceased husband, saying that they married on 26 September 2007;
- a Vietnamese family record book and translation, listing the dependant applicants and the visa applicant;
- a birth certificate and translation for the visa applicant;
- an identity card and translation for the visa applicant;
- a CV and translation for the visa applicant dated 7 June 2016, stating that she completed 2/12 high school education, received family support from January 1986 until August 2014, and housewife since;
- a Vietnamese police check and translation for the visa applicant, dated 20 June 2016, showing no convictions;
- a birth certificate and translation for the dependant applicant To Quoc Vu;
- a Vietnamese police check and translation for the visa applicant, dated 8 June 2017, showing no convictions;
- copies of the visa applicant and dependant applicants' passports;

- a written statement and translation by the visa applicant describing her relationship, dated 18 August 2016;
- a birth certificate for the review applicant;
- a statutory declaration by the review applicant giving further information regarding his personal details, dated 15 September 2016;
- a statutory declaration by the review applicant describing their relationship dated 15 September 2016;

The applicants provided the following documents to the Tribunal:

- several photos showing the applicants together and separately;
- two invoices from Ha Vy Hotel for the review applicant, showing him staying from 6 May 2016 until 9 May 2016, and 19 May 2016 until 21 May 2016;
- an untranslated document with the review applicant's name;
- two receipts for money transfer, untranslated;
- a travel receipt;
- flight tickets for the review applicant to Ho Chi Minh City and return, arriving 7 May 2016 and returning 21 May 2016;
- a flight itinerary for the review applicant travelling from Phu Quoc to Ho Chi Minh city on 19 May 2016, and returning to Phu Quoc on 21 May 2016;
- a flight itinerary for the visa applicant travelling to Australia from 28 December 2015 until 26 January 2016;
- a flight itinerary for the review applicant travelling to Vietnam from 7 May 2016 and returning 21 May 2016;
- a Vietnamese family record book and translation, listing the dependant applicants and the visa applicant;
- numerous statutory declarations;
- a copy of the Form 40 sponsorship form, previously supplied to the Department;
- a copy of the review applicant's statutory declaration dated 15 September 2016, previously supplied to the Department;
- receipts of money transfer from the review applicant to the visa applicant;
- a copy of the review applicant's lease and bond lodgement;
- a copy of a receipt for the visa applicant under the last name Raymont for the Ha Vy hotel for an overnight stay on 10 July 2015;

- a copy of flight tickets for the review applicant travelling to Vietnam from 10 July 2015 until 21 July 2015, and travel itineraries for the same;
- additional photos;
- flight tickets for the review applicant travelling to Vietnam from 12 September 2015 until 26 September 2015;
- flight itinerary and tickets for the visa applicant travelling from Ho Chi Minh from 13 September 2015 until 26 September 2015.